

ATTACHMENT 4

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL)
ROBOT ANTITRUST LITIGATION)
)
THIS DOCUMENT RELATES TO ALL)
CASES)
)
SURGICAL INSTRUMENT SERVICE) Case No.
COMPANY, INC.,) 3:21-cv-03496-VC
Plaintiff,)
v.)
INTUITIVE SURGICAL, INC.,)
Defendants.)
-----)

REMOTE VIDEO RECORDED DEPOSITION OF
JUDITH SCHIMMEL
Thursday, September 22, 2022

REPORTED BY:
RENEE HARRIS, CSR, CCR, RPR
JOB NO. 5490761

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COMPANY, INC.,) 3:21-cv-03496-VC
Plaintiff,)
v.)
INTUITIVE SURGICAL, INC.,)
Defendants.)
_____)

Remote Videotaped Deposition of JUDITH
SCHIMMEL, the witness herein, at 10:08 a.m. EDT,
on Thursday, September 22, 2022, before Renee
Harris, California Certified Shorthand Reporter
No. 14168, New Jersey Certified Court Reporter No.
30XI00241200 and Registered Professional Reporter.

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9
10 Also Present:

11 Bobby Amick, ESQ., In-House Counsel,

12 Hospital Plaintiffs

13 Scott Slater, Videographer

1 agreement.

2 BY MR. CHAPUT:

3 Q. Okay. So if, you know, for example,
4 tomorrow, Franciscan were to request a transaction
5 agreement for a new robot purchase, you would 12:37:14
6 agree -- you would review that transaction
7 agreement; correct?

8 A. Correct.

9 Q. Did you review transaction agreements
10 between 2020 and March of 2021 when the Dyer 12:37:28
11 agreement was entered into?

12 A. I have only reviewed this particular
13 document. I have not reviewed any previous
14 transaction documents.

15 Q. You can set that document aside. Thank 12:37:42
16 you.

17 So we had talked some about the
18 procurement process earlier, and I'd just like to
19 briefly understand a little bit more about that
20 process. 12:38:09

21 So could you please walk me through
22 before Franciscan had the master agreement, what
23 would the procurement process be for a hospital
24 that wanted to purchase a da Vinci robot?

25 A. So speaking from my director days, we 12:38:29

1 would identify a need for procuring either a robot
2 or a second robot. We would have to have a
3 request for that, and have documentation for
4 reasoning, for needing a robot or a second robot;
5 that, in turn, requests would be taken forward and 12:38:53
6 our finance department would assist in developing
7 a return on investment and a portfolio pro forma
8 so that we could make the presentation to our
9 corporate senior leaders for the funding.

10 And then if that funding based on that 12:39:23
11 request was approved, then the facility was
12 approved for purchase.

13 Q. So at the first step, identifying the
14 need for a robot, who would identify that need?

15 A. So from my previous experience, it would 12:39:53
16 be myself, Intuitive, physicians looking at our
17 availability of time and the ability to schedule
18 procedures.

19 Q. Would you also look at overall case
20 volume of surgeries that were being performed -- 12:40:28
21 let me rephrase this question.

22 Would you also look at the overall volume
23 of the procedures that were being performed,
24 whether a laparoscopic or open modality are also
25 robotic modality? 12:40:53

1 A. Not in identifying the need.

2 Q. And why wouldn't you look at that in
3 identifying the need?

4 A. Because that's not -- that wasn't based
5 on any criteria. You would not look at that in 12:41:06
6 identifying the need for a second robot; that
7 would be part of a pro forma.

8 Q. Okay. So you -- you would consider that
9 in the return on investment analysis; is that
10 correct? 12:41:25

11 A. Correct.

12 Q. Okay. And so when you -- when you
13 document the reasons for the request, is that the
14 same as that need that you were just describing of
15 looking at the availability of robot time and the 12:41:40
16 ability to schedule robotic surgeries?

17 A. As well as a physician request.

18 Q. So then you mentioned that the request
19 goes forward to the finance department who helps
20 develop an ROI portfolio. 12:42:08

21 What's included in the ROI portfolio?

22 A. Typically cost of equipment, all service
23 costs, disposable costs, instrumentation costs.
24 So the entire start-up costs.

25 And then volume, projected volume, 12:42:36

1 reimbursement, and that carries out to five years,
2 usually.

3 Q. And in order to get the request approved
4 by corporate leadership, would this pro forma need
5 to reflect a positive ROI? 12:43:10

6 A. Doesn't always reflect a positive ROI.
7 Depending on the number of years, if it needs to
8 go out five more years or seven or ten, it needs
9 to reflect the return on investment and what that
10 would look like. 12:43:36

11 Q. So you said it doesn't always reflect a
12 positive ROI. Are you -- do you recall specific
13 instances where a da Vinci robot purchase did not
14 reflect a positive ROI in the pro forma, and
15 corporate senior leadership nonetheless approved 12:43:57
16 the request?

17 A. I can't speak to anyone other than the
18 time frame when I brought forth a request to add a
19 da Vinci robot in our Lafayette campus.

20 So I can't answer that. I don't know. 12:44:14

21 Q. So I just want to make sure that I'm
22 understanding.

23 Are you saying that you only --
24 Franciscan only purchased one da Vinci robot
25 during your tenure as surgical director at 12:44:29

1 Lafayette?

2 A. We purchased two: The Si, and then we
3 added an Xi while I was there several years later.

4 Q. Okay. And for both of those purchases,
5 did you follow the process, the procurement 12:44:50
6 process that you explained to me a few minutes
7 ago?

8 A. It would have followed the procurement
9 process. I was not as involved as I was with the
10 second one. 12:45:02

11 Q. Just so we're clear: You were not
12 involved in the first purchase as you were with
13 the second; is that right?

14 A. I didn't provide as much information on
15 the first request as the second request. 12:45:14

16 Q. And for those two requests, did the ROI
17 analysis that the finance department put together
18 reflect a positive ROI?

19 A. I don't recall seeing the first pro
20 forma. 12:45:39

21 The second pro forma, I don't remember.
22 I can't recall if it was positive or negative. I
23 don't -- I can't remember. I would have to look
24 at it.

25 Q. Do you expect that the corporate senior 12:46:09

1 STATE OF CALIFORNIA)
(Ss.
2 COUNTY OF LOS ANGELES)
3

4 I, RENEE HARRIS, do hereby certify that I
5 am a licensed Certified Shorthand Reporter, duly
6 qualified and certified as such by the State of
7 California;

8 That prior to being examined, the witness named
9 in the foregoing deposition was by me duly sworn
10 to testify to tell the truth, the whole truth, and
11 nothing but the truth;

12 That the said deposition was by me recorded
13 stenographically;

14 And the foregoing pages constitute a full,
15 true, complete and correct record of the testimony
given by the said witness;

16 That I am a disinterested person, not
17 being in any way interested in the outcome of said
18 action, or connected with, nor related to any of
19 the parties in said action, or to their respective
20 counsel, in any manner whatsoever.

21 Dated: October 7, 2022
22

23 

24 Renee Harris, CSR, CCR, RPR
CA CSR No. 14168,
25 NJ CRR No. 30XI00241200; RPR